

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Ralph D'Agosta
Application No. 10/606,414	Filing Date: June 26, 2003
Title of Application:	Portable Heated Water Dispensing Device
Confirmation No. 5674	Art Unit: 2836
Examiner	Ronald W. Leja

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 CFR §41.37

Dear Sir:

A Notice of Appeal from the final rejection of Claims 1-17, all pending claims of U.S. Patent Application No. 10/606,414, being filed herewith, Applicant also files its Appeal Brief. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

(i) Real Party In Interest

The real party in interest is America's Acres, Inc.; 87 New Preston Road;
New Preston, CT 06777.

(ii) Related Appeals and Interferences

There are no related Appeals or Interferences.

(iii) Status Of Claims

Claims 1, 3-17, all pending claims of the present application, stand rejected and are the subject of the instant Appeal. A copy of each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

There are no outstanding amendments.

(v) Summary Of Claimed Subject Matter

Claims 1, 12 and 17 are the independent claims.

Independent Claim 1

Claim 1 is directed to a portable water heating system 10 which includes a housing 14 with an inside and an outside, the housing 14 being adapted to be portable to store and transport water received therein. *See, e.g.*, Spec. ¶¶ 0032, 0044-0045 and Figs. 1, 7A-7C. A water inlet 16 is disposed on the outside of the housing 14, and a first hose nipple 22 is attached to the water inlet 16, the first hose nipple 22 being adapted to connect a water source to the system 10. *See, e.g.*, Spec. ¶¶ 0035, 0043 and Fig. 1. A heating element 26 adapted to heat water is disposed inside the housing 14, as is a lining 28 which is adapted to protect the inside of the housing 14 from water corrosion. *See, e.g.*, Spec. ¶¶ 0037, 0039 and Figs. 4, 8A. The system includes an adjustable thermostatic control 38 controlling the output of the heating element 26. *See, e.g.*, Spec. ¶¶ 0039, 0040 and Figs. 5, 6. A water outlet 18 is disposed on the outside of the housing 14, and a second hose nipple 24 is attached to the water outlet 18, the second hose nipple 24 being adapted to connect a fluid conduit for heated water distribution. *See, e.g.*, Spec. ¶¶ 0036, 0043 and Fig. 1.

Independent Claim 12

Claim 12 is directed to a portable water heating system 10 which includes a housing 14 with an inside and an outside, the housing 14 being adapted to directly hold water and to transport water stored therein. *See, e.g.*, Spec. ¶¶ 0032, 0044-0045 and Figs. 1, 7A-7C. A water inlet 16 is disposed on the outside of the housing 14, and a first

hose nipple 22 is attached to the water inlet 16, the first hose nipple 22 being adapted to connect a water source to the system 10. *See, e.g.,* Spec. ¶¶ 0035, 0043 and Fig. 1. A heating element 26 adapted to heat water is disposed inside the housing 14, as is a lining 28 which is adapted to protect the inside of the housing 14 from water corrosion. *See, e.g.,* Spec. ¶¶ 0037, 0039 and Figs. 4, 8A. A water outlet 18 is disposed on the outside of the housing 14, and a second hose nipple 24 is attached to the water outlet 18, the second hose nipple 24 being adapted to connect a fluid conduit for heated water distribution. *See, e.g.,* Spec. ¶¶ 0036, 0043 and Fig. 1. The system 10 also includes an adjustable thermostatic control 38 controlling the output of the heating element 26, a first ground fault protection device 40 disposed between an external electrical supply and the adjustable thermostatic control 38, and a high temperature shutoff element located in the adjustable thermostatic control 38, the high temperature shutoff element protecting the system 10 by shutting the system 10 down when a predetermined threshold temperature has been exceeded. *See, e.g.,* Spec. ¶¶ 0039, 0040 and Figs. 5, 6.

Independent Claim 17

Claim 17 is directed to a method of increasing safety when using a portable water heating system 10, including the steps of: (i) providing a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein (*See, e.g.,* Spec. ¶¶ 0032, 0044-0045 and Figs. 1, 7A-7C); (ii) providing

a portable water heating system 10 with a heating element 26 (*see, e.g.*, Spec. ¶ 0039 and Fig. 4); (iii) controlling the heating element 26 operation with an adjustable thermostatic control 38 (*see, e.g.*, Spec. ¶ 0039 and Fig. 6); (iv) providing a ground fault detecting device 40 between the adjustable thermostatic control 38 and the external electrical supply (*see, e.g.*, Spec. ¶ 0040 and Fig. 5); and (v) shutting off the system 10 with a high temperature shutoff element forming a part of the adjustable thermostatic control 38, when a predetermined threshold has been exceeded (*see, e.g.*, Spec. ¶ 0039 and Fig. 6).

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claims 1 and 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez (U.S. Patent No. 2,861,170) in view of Alston et al. (U.S. Patent No. 4,947,025).

Claims 3, 7, 8 and 12-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. and further in view of Winter et al. (U.S. Patent No. 6,628,894).

Claims 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Nelson (U.S. Patent No. 4,974,551) and Twigg (5,853,553).

(vii) Argument

All claims stand rejected either under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. or under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. in further view of various secondary and tertiary references. Applicant respectfully asks that these rejections be reconsidered in view of the following Remarks.

Claim 1

Claim 1 of the present application requires, *inter alia*, a portable water heating system with a "housing adapted to directly hold water and to transport water stored therein; ... a heating element adapted to heat water inside the housing; [and] an adjustable thermostatic control controlling the output of the heating element[.]" Applicant's portable water heating system requires that the housing, which heats and holds the heated water, is portable (i.e., not fixed to elements external thereto), and that it be adapted to store water for later use and to transport that stored water when and to the where its use is desired. (See Application at ¶¶ 0009,0043).

Rodriguez is directed to a water heating attachment for cold water pipes that is fixed to a pipe for support, and thus, is not adapted to store and transport water to a desired location. (Rodriguez, col. 1, l. 71-72; col., 2 l. 2-3.) Rodriguez's heating attachment includes a tank capable of holding two-gallons of water while attached to

supply pipe, which is non-portable (i.e., it is not adapted to be filled with water, heat the water and then transported elsewhere for dispensing the heated water), and is only intended to be used to heat and dispense water when it is so fixed to a cold water pipe, for instance, the supply pipe of a shower. (Rodriguez, col. 4, l. 26-30). Rodriguez is not adapted to transport water held within its tank.

Rodriguez expressly states that the objective is to "simplify the construction so that a single manually operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator." (Rodriguez, col. 1, l. 19-23). Rodriguez further expressly states that the objective is "to provide a simplified electrical control for an electric water heater." (Rodriguez, col. 1, l. 27-29). To this end, Rodriguez goes to great lengths to describe a valve assembly 20 that directs a portion of the cold water introduced from arm 29a into tank 15 and the other portion of the cold water into the other arm 29c. (Rodriguez, col. 2 l. 65 – col. 3 l. 2). Tube 44 combines the water heated in tank 15 with the cold water in arm 29c. (Rodriguez, col. 2 l. 65 – col. 3 l. 2). Turning valve 20 alters the amount of cold water mixed. (Rodriguez, col. 4, l. 15-18). Rodriguez states that the ability to mix hot and cold water "is an important feature of my invention." (Rodriguez, col. 3 l. 2). The valve is activated by lever 52, which is described as providing "a long arm that is curved to conform generally to the outer surfaces of the shower attachment and extends down alongside the tank but slightly spaced therefrom; see Figs. 2 and 3." (Rodriguez, col. 3 l. 21-24). Rodriguez discloses

a thermostat 66 that "is a safety device which acts automatically to open the circuit of the heating coil 30 whenever the temperature of the valve chamber rises to a predetermined point." (Rodriguez, col. 3 l. 64-67). Further, Rodriguez discloses that tank 15 is capable of holding two-gallons of water while attached to the supply pipe. (Rodriguez, col. 4, l. 26-30).

Alston discloses a portable electric water heater with a coiled water conducting tube 29 that extends from the aft end of housing 11 through the forward end of housing 11. (Alston, col. 2, l. 39-56). An electrical resistance heating element 30 encircles each coil of conducting tube 29. (Alston, col. 2, l. 39-56). A rheostat 44 that controls the amount of current applied to the electrical resistance heating element 30. (Alston, col. 3, l. 12-14). The rheostat 44 enables water of different temperature levels to be dispensed by the water heater. (Alston, col. 3, l. 30-32). Alston expressly teaches that the benefit of its system is that it is light do to the fact that "no water is stored within the coiled water conducting tube during periods of non-use[.]" (Alston, col. 1, l. 57-59).

When considering a prior art reference, the reference must be considered in its entirety, including those portions that would lead away from the claimed invention. *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Applicant respectfully submits that the claimed invention is not obvious over the cited

references because one skilled in the art would not combine or modify these references in accordance with claim 1 because both references teach away the combination.

As noted above, Rodriguez discloses a non-portable tank that holds two-gallons of water while attached to a supply pipe and is only intended to be used to heat and dispense water when it is so fixed to a cold water pipe. Rodriguez further expressly states that the ability to control the temperature of the water using the valve system is an important feature of the invention. Still further, Rodriguez expressly states that the objective of the disclosure is to provide a device with simplified electrical control. In furtherance of these objectives, Rodriguez discloses a device with a valve that mixes cold water with hot water and a thermostat that operates as a high temperature shutoff element when the hot water temperature reaches a predetermined point. Thus, Rodriguez teaches away a portable water heating system with a "housing adapted to directly hold water and to transport water stored therein; ... a heating element adapted to heat water inside the housing; [and] an adjustable thermostatic control controlling the output of the heating element[.]"

Alston on the other hand discloses a portable water heater that does not store and transport water. Alston expressly states that the benefit of its water heating system is that it does not store water, enabling the device to be light weight. Thus, like Rodriguez, Alston teaches away a portable water heating system with a "housing

adapted to directly hold water and to transport water stored therein; ... a heating element adapted to heat water inside the housing; [and] an adjustable thermostatic control controlling the output of the heating element[.]”

One skilled in the art would also not combine these references in accordance with claim 1 because such a combination would defeat the purposes of both references. It is improper to reject a claim as obvious over a prior art reference when the modification would render the prior art unsatisfactory for its intended purpose. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP 2143.01.

As discussed above, Rodriguez expressly states that the objective is to “simplify the construction so that a single manually operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator.” (Rodriguez, col. 1, l. 19-23). Rodriguez further expressly states that the objective is “to provide a simplified electrical control for an electric water heater.” (Rodriguez, col. 1, l. 27-29). To this end, Rodriguez only discloses the use of a high temperature cut off. Based on the teachings of Rodriguez, one skilled in the art would not apply the adjustable thermostat of Alston because this would not “simplify the construction so that a single manually operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator” or “provide a simplified electrical control.” (Rodriguez, col. 1, l. 19-23, l. 27-29). Thus, one skilled in the art would not

apply the teachings in Alston to Rodriguez because such a combination would defeat the purpose of Rodriguez.

The Examiner states that one skilled in the art would apply the adjustable thermostat of Alston to Rodriguez "as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application... [This modification] complements the valve and adds a further degree of choice and safety to the design." (Final Office Action p. 2-3). However, this suggested motivation by the Examiner is directly contrary to the teachings of Rodriguez to "simplify the construction so that a single manually operated valve will shut off the water or will turn on cold water, or warm water, or hot water as selected by the operator." (Rodriguez, col. 1, l. 19-23). Further, with respect to safety, Rodriguez already incorporates a feature which achieves this objective through the high temperature cut-off. Thus, one skilled in the art would not apply the adjustable thermostat of Alston to Rodriguez as a safety feature because Rodriguez already incorporates a high temperature cut-off safety device and the addition of such a feature from Alston is contrary to the objective of Rodriguez for simplicity.

Similarly, the teachings of Rodriguez are contrary to the teachings of Alston. As noted above, Alston expressly teaches that the benefit of its system is that it is light do

to the fact that "no water is stored within the coiled water conducting tube during periods of non-use[.]" (Alston, col. 1, l. 57-59). Rodriguez on the other hand stores water. Thus, one skilled in the art would not apply the water storage capability of Rodriguez to Alston because such a combination would defeat the purpose of Alston.

It is well-established that a proposed modification cannot change the principle of operation of prior art device. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959); MPEP 2143.01. Applicant submits that since the objectives of Rodriguez and Alston are completely distinct, it is entirely uncertain what combination would result, if any combination would in fact be made. Rodriguez teaches a shower attachment that controls water temperature using a valve system, stores water, and only uses a thermostat as a high temperature cutoff. Alston teaches a portable water heater that benefits from the lack of storing water and only controls temperature using a heating element that surrounds water tubes and a rheostat. Both references disclose devices with characteristics that are expressly disclaimed by the other reference. In view of these references' inherent distinctiveness, Applicant submits that claim 1 is not obvious in view of these references because any combination of these references would change the principle of operation of both references.

In view of the above, Applicant respectfully submits that Claim 1 is not obvious over Rodriguez in view of Alston.

Claims 3-11

Since Claims 4-7 and 9-11 depend, either directly or indirectly from Claim 1, Applicant respectfully submits that Claims 3-11 are patentable for the reasons discussed above with respect to Claim 1.

Claims 12-16

All of Claims 12-16 require, *inter alia*, a housing adapted to directly hold water and to transport water stored therein, and an adjustable thermostatic control controlling the output of the heating element, in a manner similar to Claim 1 discussed above. As such, Applicant respectfully submits that Claims 12-16 are patentable for the reasons discussed above with respect to Claim 1.

Claim 17

Claim 17 requires, *inter alia*, the steps of "providing a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein and controlling the heating element operation with an adjustable thermostatic control, in a manner similar to Claim 1 discussed above. As such, Applicant respectfully

submits that Claim 17 is patentable for reasons similar to those discussed above with respect to Claim 1.

Conclusion

For the foregoing reasons, Applicant respectfully submits that the claimed invention embodied in each of claims 1-17 is patentable over the cited prior art. As such, Applicant respectfully requests that the rejections of each of claims 1-17 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of claims 1-17.

Respectfully submitted,

/ Wesley W. Whitmyer, Jr./

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**Claims Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/606,414**

1. A portable water heating system, the system comprising:
 - a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein;
 - a water inlet disposed on the outside of the housing;
 - a first hose nipple attached to the water inlet, the first hose nipple adapted to connect a water source to the system;
 - a heating element adapted to heat water inside the housing;
 - an adjustable thermostatic control controlling the output of the heating element;
 - a lining disposed inside of the housing, the lining adapted to protect the inside of the housing from water corrosion;
 - a water outlet disposed on the outside of the housing; and
 - a second hose nipple attached to the water outlet, the second hose nipple adapted to connect a fluid conduit for heated water distribution.
2. (cancelled)
3. The system of claim 1 further comprising a first ground fault protection device disposed between an external electrical supply and the adjustable thermostatic control and a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold temperature has been exceeded.
4. The system of claim 1 further comprising a set of wheels mounted on the outside of the housing.

5. The system of claim 1 further comprising a handle attached to the outside of the housing.

6. The system of claim 5 wherein the handle is selected from the group consisting of a fixed handle, a folding handle, a retractable handle, a molded handle and combinations of these.

7. The system of claim 1 further comprising a mounting element interface located on the outside of the housing, the mounting element interface securing the system to a mounting element when not in use.

8. The system of claim 3 further comprising an insulated barrier surrounding the outside of the housing, a second ground fault protection device disposed between the external electrical supply and the heating element, and wherein no coiled water conducting tube is provided so as to remove an element prone to failure due to clogging from the system.

9. The system of claim 1 further comprising a relief valve disposed on the outside of the housing, wherein the housing comprises a double walled housing and an anode disposed inside the housing, the anode protecting parts located on the inside of the housing from corrosive effects of water.

10. The system of claim 9 wherein an outer wall of the housing is made of a material different than an inner wall of the housing.

11. The system of claim 10 wherein the housing material is selected from the group of materials comprising plastic, metal, metal-alloys, rubber, fiberglass, epoxy,

synthetic rubber compounds, latex compounds, polyurethane, fiber resin composite materials and combinations of these.

12. A portable water heating system, the system comprising:
 - a housing with an inside and an outside, the housing adapted to directly hold water and to transport water stored therein;
 - a water inlet disposed on the outside of the housing;
 - a first hose nipple attached to the water inlet, the first hose nipple adapted to connect a water source to the system;
 - a heating element adapted to heat water inside the housing;
 - a lining disposed inside of the housing, the lining adapted to protect the inside of the housing from water corrosion;
 - a water outlet disposed on the outside of the housing;
 - an adjustable thermostatic control controlling the output of the heating element;
 - a first ground fault protection device disposed between an external electrical supply and the adjustable thermostatic control;
 - a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold temperature has been exceeded; and
 - a second hose nipple attached to the water outlet, the second hose nipple adapted to connect a fluid conduit for heated water distribution.

13. The system of claim 12 further comprising a first ground fault detecting device disposed between the external electrical supply and the adjustable thermostatic control and a high temperature shutoff element located in the adjustable thermostatic control, the high temperature shutoff element protecting the system by shutting the system down when a predetermined threshold has been exceeded.

14. The system of claim 12 further comprising a set of wheels mounted on the outside of the housing.

15. The system of claim 12 further comprising a handle attached to the outside of the housing.

16. The system of claim 15 wherein the handle is selected from the group of structures of fixed, folding, retractable, molded and combinations of these.

17. A method of increasing safety when using a portable water heating system, the method comprising:

- providing a housing with an inside and an outside, the housing adapted to be portable to store and transport water received therein;

- providing a portable water heating system with a heating element;
- controlling the heating element operation with an adjustable thermostatic control;

- providing a ground fault detecting device between the adjustable thermostatic control and the external electrical supply; and

- shutting off the system with a high temperature shutoff element forming a part of the adjustable thermostatic control, when a predetermined threshold has been exceeded.

**Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
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No evidence of any kind, including evidence submitted under 37 CFR 1.130, 1.131 or 1.132, has been entered by the Examiner and relied upon by Appellant in the appeal.

**Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 10/606,414**

There are no related Appeals or Interferences. As such, there are no decisions rendered by a court or the Board in any such Appeals or Interferences.